JIM CROW LAWS: WHAT WERE THEY?

Jim Crow was a set of laws and social customs requiring racial segregation. From 1881 to 1964, Jim Crow laws separated Americans by race in 26 states. From Delaware to California, and from North Dakota to Texas, many states (and cities, too) could impose legal punishments on people for consorting with members of another race. The most common types of laws forbade intermarriage and ordered business owners and public institutions to keep their black and white clientele separated. However, Jim Crow laws covered almost every possible area of human contact. The following is a sampling of Jim Crow laws from various states:

Nurses: No person or corporation shall require any white female nurse to nurse in wards or rooms in hospitals, either public or private, in which negro men are placed. *Alabama*

Buses: All passenger stations in this state operated by any motor transportation company shall have separate waiting rooms or space and separate ticket windows for the white and colored races. *Alabama*

Railroads: The conductor of each passenger train is authorized and required to assign each passenger to the car or the division of the car, when it is divided by a partition, designated for the race to which such passenger belongs. *Alabama*

Restaurants: It shall be unlawful to conduct a restaurant or other place for the serving of food in the city, at which white and colored people are served in the same room, unless such white and colored persons are effectually separated by a solid partition extending from the floor upward to a distance of seven feet or higher, and unless a separate entrance from the street is provided for each compartment. *Alabama*

Pool and Billiard Rooms: It shall be unlawful for a negro and white person to play together or in company with each other at any game of pool or billiards. *Alabama*

Toilet Facilities, Male: Every employer of white or negro males shall provide for such white or negro males reasonably accessible and separate toilet facilities. ***Alabama***

Intermarriage: The marriage of a person of Caucasian blood with a Negro, Mongolian, Malay, or Hindu shall be null and void. *Arizona*
Intermarriage: All marriages between a white person and a negro, or between a white person and a person of negro descent to the fourth generation inclusive, are hereby forever prohibited. *Florida*

Cohabitation: Any negro man and white woman, or any white man and negro woman, who are not married to each other, who shall habitually live in and occupy in the nighttime the same room shall each be punished by imprisonment not exceeding twelve (12) months, or by fine not exceeding five hundred ($500.00) dollars. *Florida*

Education: The schools for white children and the schools for negro children shall be conducted separately. *Florida*

Separate free schools shall be established for the education of children of African descent; and it shall be unlawful for any colored child to attend any white school, or any white child to attend any white school, or any white child to attend a colored school. *Missouri*

Juvenile Delinquents: There shall be separate buildings, not nearer than one fourth mile to each other, one for white boys and one for negro boys. White boys and negro boys shall not, in any manner, be associated together or worked together. *Florida*

Mental Hospitals: The Board of Control shall see that proper and distinct apartments are arranged for said patients, so that in no case shall Negroes and white persons be together. *Georgia*

Intermarriage: It shall be unlawful for a white person to marry anyone except a white person. Any marriage in violation of this section shall be void. *Georgia*

Barbers: No colored barber shall serve as a barber [to] white women or girls. *Georgia*

Burial: The officer in charge shall not bury, or allow to be buried, any colored persons upon ground set apart or used for the burial of white persons. *Georgia*

Restaurants: All persons licensed to conduct a restaurant, shall serve either white people exclusively or colored people exclusively and shall not sell to the two races within the same room or serve the two races anywhere under the same license. *Georgia*

Amateur Baseball: It shall be unlawful for any amateur white baseball team to play baseball on any vacant lot or baseball diamond within two blocks of a playground devoted to the Negro race, and it shall be unlawful for any amateur colored baseball team to play baseball in any vacant lot or baseball diamond within two blocks of any playground devoted to the white race. *Georgia*

Parks: It shall be unlawful for colored people to frequent any park owned or maintained by the city for the benefit, use and enjoyment of white persons...and unlawful for any white person to frequent any park owned or maintained by the city for the use and benefit of colored persons. *Georgia*

Wine and Beer: All persons licensed to conduct the business of selling beer or wine...shall serve either white people exclusively or colored people exclusively and shall not sell to the two races within the same room at any time. *Georgia*

Reform Schools: The children of white and colored races committed to the houses of reform shall be kept entirely separate from each other. *Kentucky*

Circus Tickets: All circuses, shows, and tent exhibitions, to which the attendance of...more than one race is invited or expected to attend shall provide for the convenience of its patrons not less than two ticket offices with individual ticket sellers, and not less than two entrances to the said performance, with individual ticket takers and receivers, and in the case of outside or tent

performances, the said ticket offices shall not be less than twenty-five (25) feet apart. *Louisiana*

Housing: Any person...who shall rent any part of any such building to a negro person or a negro family when such building is already in whole or in part in occupancy by a white person or white family, or vice versa when the building is in occupancy by a negro person or negro family, shall be guilty of a misdemeanor and on conviction thereof shall be punished by a fine of not less than twenty-five ($25.00) nor more than one hundred ($100.00) dollars or be imprisoned not less than 10, or more than 60 days, or both such fine and imprisonment in the discretion of the court. *Louisiana*

The Blind: The board of trustees shall...maintain a separate building...on separate ground for the admission, care, instruction, and support of all blind persons of the colored or black race. *Louisiana*

Intermarriage: All marriages between a white person and a negro, or between a white person and a person of negro descent, to the third generation, inclusive, or between a white person and a member of the Malay race; or between the negro a nd a member of the Malay race; or between a person of Negro descent, to the third generation, inclusive, and a member of the Malay race, are forever prohibited, and shall be void. *Maryland*

Railroads: All railroad companies and corporations, and all persons running or operating cars or coaches by steam on any railroad line or track in the State of Maryland, for the transportation of passengers, are hereby required to provide separate cars or coaches for the travel and transportation of the white and colored passengers. *Maryland*

- All railroads carrying passengers in the state (other than street railroads) shall provide equal but separate accommodations for the white and colored races, by providing two or more passengers for each passenger train, or by dividing the cars by partition, so as to secure separate accommodations. *Tennessee*

Education: Separate schools shall be maintained for the children of the white and colored races. *Mississippi*

Promotion of Equality: Any person...who shall be guilty of printing, publishing or circulating printed, typewritten or written matter urging or presenting for public acceptance or general information, arguments or suggestions in favor of social equality or of intermarriage between whites and negroes, shall be guilty of a misdemeanor and subject to fine or not exceeding five hundred (500.00) dollars or imprisonment not exceeding six (6) months or both. *Mississippi*

Intermarriage: The marriage of a white person with a negro or mulatto or person who shall have one-eighth or more of negro blood, shall be unlawful and void. *Mississippi*

Hospital Entrances: There shall be maintained by the governing authorities of every hospital maintained by the state for treatment of white and colored patients separate entrances for white and colored patients and visitors, and such entrances shall be used by the race only for which they are prepared. *Mississippi*

Prisons: The warden shall see that the white convicts shall have separate apartments for both eating and sleeping from the negro convicts. *Mississippi*

- It shall be unlawful for any white prisoner to be handcuffed or otherwise chained or tied to a negro prisoner. *Arkansas*

Intermarriage: All marriages between...white persons and negroes or white persons and Mongolians...are prohibited and declared absolutely void...No person having one-eighth part or more of negro blood shall be permitted to marry any white person, nor shall any white person be permitted to marry any negro or person having one-eighth part or more of negro blood. *Missouri*

Education: Separate rooms [shall] be provided for the teaching of pupils of African descent, and [when] said rooms are so provided, such pupils may not be admitted to the school rooms occupied and used by pupils of Caucasian or other descent. *New Mexico*

- Separate free schools shall be established for the education of children of African descent; and it shall be unlawful for any colored child to attend any white school, or any white child to attend a colored school. *Missouri*

Hair Dresser: No colored barber shall serve as a barber to white women or girls.

Textbooks: Books shall not be interchangeable between the white and colored schools, but shall continue to be used by the race first using them. *North Carolina*

Libraries: The state librarian is directed to fit up and maintain a separate place for the use of the colored people who may come to the library for the purpose of reading books or periodicals. *North Carolina*

Militia: The white and colored militia shall be separately enrolled, and shall never be compelled to serve in the same organization.No organization of colored troops shall be permitted where white troops are available, and while white permitted to be organized, colored troops shall be under the command of white officers. *North Carolina*

Transportation: The...Utilities Commission...is empowered and directed to require the establishment of separate waiting rooms at all stations for the white and colored races. *North Carolina*

Teaching: Any instructor who shall teach in any school, college or institution where members of the white and colored race are received and enrolled as pupils for instruction shall be deemed guilty of a misdemeanor, and upon conviction thereof, shall be fined in any sum not less than ten dollars ($10.00) nor more than fifty dollars ($50.00) for each offense. *Oklahoma*

Fishing, Boating, and Bathing: The [Conservation] Commission shall have the right to make segregation of the white and colored races as to the exercise of rights of fishing, boating and bathing. *Oklahoma*

Mining: The baths and lockers for the negroes shall be separate from the white race, but may be in the same building. *Oklahoma*

Telephone Booths: The Corporation Commission is hereby vested with power and authority to require telephone companies...to maintain separate booths for white and colored patrons when there is a demand for such separate booths. That the Corporation Commission shall determine the necessity for said separate booths only upon complaint of the people in the town and vicinity to be served after due hearing as now provided by law in other complaints filed with the Corporation Commission. *Oklahoma*

Lunch Counters: No persons, firms, or corporations, who or which furnish meals to passengers at station restaurants or station eating houses, in times limited by common carriers of said passengers, shall furnish said meals to white and colored passengers in the same room, or at the same table, or at the same counter. *South Carolina*

Child Custody: It shall be unlawful for any parent, relative, or other white person in this State, having the control or custody of any white child, by right of guardianship, natural or acquired, or otherwise, to dispose of, give or surrender such white child permanently into the custody, control, maintenance, or support, of a negro. *South Carolina*

Libraries: Any white person of such county may use the county free library under the rules and regulations prescribed by the commissioners court and may be entitled to all the privileges thereof. Said court shall make proper provision for the negroes of said county to be served through a separate branch or branches of the county free library, which shall be administered by [a] custodian of the negro race under the supervision of the county librarian. *Texas*

Education: [The County Board of Education] shall provide schools of two kinds; those for white children and those for colored children. *Texas*

Theaters: Every person...operating...any public hall, theatre, opera house, motion picture show or any place of public entertainment or public assemblage which is attended by both white and colored persons, shall separate the white race and the colored race and shall set apart and designate...certain seats therein to be occupied by white persons and a portion thereof , or certain seats therein, to be occupied by colored persons. *Virginia*

Railroads: The conductors or managers on all such railroads shall have power, and are hereby required, to assign to each white or colored passenger his or her respective car, coach or compartment. If the passenger fails to disclose his race, the conductor and managers, acting in good faith, shall be the sole judges of his race. *Virginia*

Intermarriage: All marriages of white persons with Negroes, Mulattos, Mongolians, or Malaya hereafter contracted in the State of Wyoming are and shall be illegal and void. *Wyoming*

- Marriages are void when one party is a white person and the other is possessed of one-eith or more Negro, Japanese, or Chinese blood. *Nebraska*

Games: It shall be unlawful for a negro and white person to play together or in company with each other in any game of cards or dice, dominoes or checkers. *Alabama*

Bi-racial Children: Any white woman who shall suffer or permit herself to be got with child by a negro or mulatto.....shall be sentenced to the penitentiary for not less than eighteen months. *Maryland*

The name Jim Crow is often used to describe the segregation laws, rules, and customs which arose after Reconstruction ended in 1877, and continued until the mid-1960s. How did the name become associated with these "Black Codes" which took away many of the rights which had been granted to blacks through the 13th, 14th, and 15th Amendments?

"Come listen all you galls and boys,
I'm going to sing a little song,
My name is Jim Crow.
Weel about and turn about and do jis so,
Eb'ry time I weel about I jump Jim Crow."

These words are from the song, "Jim Crow," as it appeared in sheet music written by Thomas Dartmouth "Daddy" Rice. Rice, a struggling "actor" (he did short solo skits between play scenes) at the Park Theater in New York, happened upon a black person singing the above song -- some accounts say it was an old black slave who walked with difficulty, others say it was a ragged black stable boy. Whether modeled on an old man or a young boy we will never know, but we know that in 1828 Rice appeared on stage as "Jim Crow" – an exaggerated, highly stereotypical black character.

Rice, a white man, was one of the first performers to wear blackface makeup -- his skin was darkened with burnt cork. His Jim Crow song-and-dance routine was an astounding success that took him from Louisville to Cincinnati to Pittsburgh to Philadelphia and finally to New York in 1832. He also performed to great acclaim in London and Dublin. By then "Jim Crow" was a stock character in minstrel shows, along with counterparts Jim Dandy and Zip Coon. Rice's subsequent blackface characters were Sambos, Coons, and Dandies. White audiences were receptive to the portrayals of blacks as singing, dancing, grinning fools.

By 1838, the term "Jim Crow" was being used as a collective racial epithet for blacks, not as offensive as nigger, but similar to coon or darkie. The popularity of minstrel shows clearly aided the spread of Jim Crow as a racial slur. This use of the term only lasted half a century. By the end of the 19th century, the words Jim Crow were less likely to be used to derisively describe blacks; instead, the phrase Jim Crow was being used to describe laws and customs which oppressed blacks.

The minstrel show was one of the first native forms of American entertainment, and Rice was rightly regarded as the "Father of American minstrelsy." He had many imitators. In 1843, four white men from New York, billed as the Virginia Minstrels, darkened their faces and imitated the singing and dancing of blacks. They used violins, castanets, banjos, bones, and tambourines.

Their routine was successful and they were invited to tour the country. In 1845, the Christy Minstrels (for whom Stephen Foster wrote some of his most popular songs) originated many features of the minstrel show, including the seating of the blackface performers in a semicircle on stage, with the tambourine player (Mr. Tambo) at one end, and the bones player (Mr. Bones) at the other; the singing of songs, called Ethiopian melodies, with harmonized choruses; and the humorous banter of jokes between the endmen and the performer in the middle seat (Mr. Interlocutor). These performers were sometimes called Ethiopian Delineators and the shows were popularly referred to as Coon Shows.

Rice and his imitators, by their stereotypical depictions of blacks, helped to popularize the belief that blacks were lazy, stupid, inherently less human, and unworthy of integration. During the years that blacks were being victimized by lynch mobs, they were also victimized by the racist caricatures propagated through novels, sheet music, theatrical plays, and minstrel shows. Ironically, years later when blacks replaced white minstrels, the blacks also "blackened" their faces, thereby pretending to be whites pretending to be blacks. They, too, performed the Coon Shows which dehumanized blacks and helped establish the desirability of racial segregation.

Daddy Rice, the original Jim Crow, became rich and famous because of his skills as a minstrel. However, he lived an extravagant lifestyle, and when he died in New York on September 19, 1860, he was in poverty.

The minstrel shows were popular between 1850 and 1870, but they lost much of their national popularity with the coming of motion pictures and radios. Unfortunately for blacks, the minstrel shows continued in small towns, and caricatured portrayals of blacks found greater expression in motion pictures and radios.

1965 ALABAMA LITERACY TEST

Name_____

1. Which of the following is a right guaranteed by the Bill of Rights?
____Public Education ____Employment
____Voting ____Trial by Jury

2. The federal census of population is taken each five years. ____True ____False

3. If a person is indicted for a crime, name two rights which he has.

_____

4. A U.S. senator elected at the general election in November takes office the following year on what date?_____

5. A President elected at the general election in November takes office the following year on what date?_____

6. Which definition applies to the word "amendment?"
____Proposed change, as in a Constitution
____Making of peace between nations at war
____A part of the government

7. A person appointed to the U.S. Supreme court is appointed for a term of_____.

8. When the Constitution was approved by the original colonies, how many states had to ratify it in order for it to be in effect?____

9. Does enumeration affect the income tax levied on citizens in various states? _____

10. Persons opposed to swearing in an oath may say, instead: (solemnly_____)

11. To serve as President of the United States, a person must have attained:
____25 ____35 ____40 ____45 years

12. What words are required by law to be on all coins and paper currency of the U.S.?

_____

13. The Supreme Court is the chief lawmaking body of the state. ____True ____False

14. If a law passed by a state is contrary to provisions of the U.S. Constitution, which law prevails?

_____

15. If a vacancy occurs in the U.S. Senate, the state must hold an election, but meanwhile the place may be filled by a temporary appointment made by_____

16. A U.S. senator is elected for a term of ____ years.

17. Appropriation of money for the armed services can be only for a period limited to ____ years.

18. The chief executive and the administrative offices make up the _____ branch of government.

19. Who passes laws dealing with piracy?

_____

20. The number of representatives which a state is entitled to have in the House of Representatives is based on _____

21. The Constitution protects an individual against punishments which are _____
and _____.

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1965 ALABAMA LITERACY TEST PAGE 2

22. When a jury has heard and rendered a verdict in a case, and the judgment on the verdict has become final, the defendant cannot again be brought to trial for the same cause. ____True ____False

23. Name two levels of government which can levy taxes: _____

24. Communism was the type of government in:
____U.S. ____Russia ____England

25. Cases tried before a court of law are two types, civil and _____

26. By a majority vote of the members of Congress, the Congress can change provisions of the Constitution of the U.S. ____True ____False

27. For security, each state has a right to form a _____

28. The electoral vote for President is counted in the presence of two bodies. Name them:
_____
_____

29. If no candidate for President receives a majority of the electoral vote, who decides who will become President?_____

30. Of the original 13 states, the one with the largest representation in the first Congress was _____

31. Of which branch of government is the Speaker of the House a part?
____Executive ____Legislative ____Judicial

32. Capital punishment is the giving of a death sentence. ____True ____False

33. In case the President is unable to perform the duties of his office, who assumes them?
_____

34. "Involuntary servitude" is permitted in the U.S. upon conviction of a crime. ____True ____False

35. If a state is a party to a case, the Constitution provides that original jurisdiction shall be in _____

36. Congress passes laws regulating cases which are included in those over which the U.S. Supreme Court has _____ jurisdiction.

37. Which of the following is a right guaranteed by the Bill of Rights of the U.S. Constitution?
____Public Housing ____Education
____Voting ____Trial by Jury

38. The Legislatures of the states decide how presidential electors may be chosen.
____True ____False

39. If it were proposed to join Alabama and Mississippi to form one state, what groups would have to vote approval in order for this to be done?
_____

40. The Vice President presides over _____

41. The Constitution limits the size of the District of Columbia to _____

42. The only laws which can be passed to apply to an area in a federal arsenal are those passed by _____ provided consent for the purchase of the land is given by the _____

43. In which document or writing is the "Bill of Rights" found? _____

44. Of which branch of government is a Supreme Court justice a part?
____Executive ____Legislative ____Judicial

45. If no person receives a majority of the electoral votes, the Vice President is chosen by the Senate.
____True ____False

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1965 ALABAMA LITERACY TEST PAGE 3

46. Name two things which the states are forbidden to do by the U.S. Constitution.

_____

47. If election of the President becomes the duty of the U.S. House of Representatives and it fails to act, who becomes President and when?

_____

48. How many votes must a person receive in order to become President if the election is decided by the U.S. House of Representatives? _____

49. How many states were required to approve the original Constitution in order for it to be in effect?

_____

50. Check the offenses which, if you are convicted of them, disqualify you for voting:
____Murder ____Issuing worthless checks
____Petty larceny ____Manufacturing whiskey

51. The Congress decides in what manner states elect presidential electors. ____True ____False

52. Name two of the purposes of the U.S. Constitution. _____

_____

53. Congress is composed of

_____

54. All legislative powers granted in the U.S. Constitution may legally be used only by_____

55. The population census is required to be made every ____ years.

56. Impeachments of U.S. officials are tried by

_____

57. If an effort to impeach the President of the U.S. is made, who presides at the trial?

_____

58. On the impeachment of the chief justice of the Supreme court of the U.S., who tries the case?

_____

59. Money is coined by order of:
____U.S. Congress ____The President's Cabinet
____State Legislatures

60. Persons elected to cast a state's vote for U.S. President and Vice President are called presidential

_____

61. Name one power which is exclusively legislative and is mentioned in one of the parts of the U.S. Constitution above. _____

62. If a person flees from justice into another state, who has authority to ask for his return? _____

63. Whose duty is it to keep Congress informed of the state of the union? _____

64. If the two houses of Congress cannot agree on adjournment, who sets the time?

_____

65. When presidential electors meet to cast ballots for President, must all electors in a state vote for the same person for President or can they vote for different persons if they so choose? _____

66. After the presidential electors have voted, to whom do they send the count of their votes?

_____

67. The power to declare war is vested in _____

68. Any power and rights not given to the U.S. or prohibited to the states by the U.S. Constitution are specified as belonging to whom? _____

_____

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ANSWERS TO ALABAMA LITERACY TEST

1. Trial by Jury only
2. False (every *10* years)
3. Habeas Corpus (immediate presentation of charges); lawyer; speedy trial
4. January 3
5. January 20
6. Proposed change, as in a Constitution
7. Life (with good behavior)
8. Nine
9. Yes
10. Affirm
11. 35
12. In God We Trust
13. False
14. U.S. Constitution
15. The governor
16. Six
17. Two
18. Executive
19. Congress
20. Population (as determined by census) *less untaxed Indians*
21. Cruel and unusual
22. True
23. State and local
24. Russia
25. Criminal
26. False
27. Militia
28. House of Representatives, Senate
29. House of Representatives
30. Virginia
31. Legislative
32. True
33. The Vice President
34. True
35. The Supreme Court
36. Co-appellate
37. Trial by jury
38. True
39. Congress and the legislatures of both states
40. the Senate
41. 10 miles square
42. Congress; state legislatures
43. Constitution
44. Judicial
45. True
46. Coin money; make treaties
47. The Vice President, until the House acts
48. 26
49. 9
50. Murder
51. False
52. (Preamble statements) "to form a more perfect union, establish justice, insure domestic tranquillity, provide for the common defense, promote the general welfare, and secure the blessings of liberty to ourselves and our posterity."
53. House of Representatives and Senate
54. Congress
55. 10
56. The Senate
57. The Chief Justice of the Supreme Court
58. The Senate
59. The U. S. Congress
60. Electors
61. Pass laws, coin money, declare war
62. The Governor
63. The President
64. The President
65. They can vote for different people.
66. Vice President (President of the Senate)
67. Congress
68. The states; the people

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Showtimes & Tickets
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About The Movie
Selected Scenes/Extras
Filmmaker Bios

GET INVOLVED
Drug War Today
Drug War History
Community Action
Go
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Addiction And Treatment

DRUG WAR HISTORY

A Brief Outline of Drug Policies in the United States

DRUG LAWS PRE-1960S

1914 – The Harrison Act restricts the sale of heroin and cocaine – both legal at the time – and establishes a legal framework for federal intervention on drug policy.

1919 – Alcohol prohibition is enacted as the 18th Amendment to the Constitution. The failure of Prohibition led to its repeal in 1933 – the only Constitutional Amendment ever repealed by the States.

1937 – After the 1936 release of the anti-marijuana film "Reefer Madness," combined with growing pressure from western states over complaints about Mexican laborers, Congress passes the Marijuana Tax Act of 1937, which in effect criminalizes the possession and use of marijuana. More...

1951 – Boggs Amendment – Congress enacts federal mandatory minimums for drug possession. More...

1956 – Narcotics Control Act increases penalties for drug offenses, including possession. More...

Nixon and the Generation Gap

In the 1960s, as drugs became symbols of youthful rebellion, social upheaval, and political dissent, the government halted scientific research to evaluate their medical safety and efficacy.

In June 1971, President Nixon declared a "war on drugs." He dramatically increased the size and presence of federal drug control agencies, and pushed through measures such as mandatory sentencing and no-knock warrants. Nixon temporarily placed marijuana in Schedule One, the most restrictive category of drugs, pending review by a commission he appointed led by Republican Pennsylvania Governor Raymond Shafer. In 1972, the commission unanimously recommended decriminalizing the possession and distribution of marijuana for personal use. Nixon ignored the report and rejected its recommendations.

States began to follow Nixon's "war on drugs," first with New York enacting the draconian Rockefeller Drug Laws in 1973. The laws, named for then-Governor Nelson Rockefeller, required long mandatory minimum sentences of 15 years to life for even first-time, nonviolent drug offenses. Gov. Rockefeller said it was time to take a criminal justice approach to drug policy. Other states followed New York's example.

The 1970s and Marijuana

Between 1973 and 1979, although many states were enacting tough laws against drugs, marijuana was largely exempt, and a number of states actually eased their marijuana laws by decriminalizing possession of small amounts. Then, in 1977, President Jimmy Carter was inaugurated on a campaign platform that included marijuana decriminalization. There was even movement towards marijuana decriminalization in Congress — in October 1977, the Senate Judiciary Committee voted to decriminalize possession of up to an ounce of marijuana for personal use, but the measure never received enough support to become law.

Within just a few years, the tide had shifted. Proposals to decriminalize marijuana were abandoned as they were ultimately caught up in a broader cultural backlash against the perceived permissiveness of the 1970s.

The 1980s and 90s: Drug Hysteria

The presidency of Ronald Reagan marked the start of a long period of skyrocketing rates of incarceration, largely thanks to his unprecedented expansion of the drug war. The number of people behind bars for nonviolent drug law offenses increased from 50,000 in 1980 to nearly 500,000 by 2000.

Soon after Ronald Reagan took office in 1981, his wife, Nancy Reagan, began a highly-publicized anti-drug campaign, coining the slogan "Just Say No." This set the stage for the zero tolerance policies implemented in the mid-to-late 1980s. Los Angeles Police Chief Daryl Gates, who stated that casual drug users "ought to be taken out and shot," founded the DARE drug education program, which was quickly adopted nationwide despite the lack of evidence of its effectiveness. Meanwhile, the increasingly harsh drug policies blocked the expansion of syringe access programs and other harm reduction policies to reduce the rapid spread of HIV/AIDS.

In 1985, the proportion of Americans polled who saw drug abuse as the nation's "number one problem" was just 2-6 percent. The figure grew through the remainder of the 1980s, driven largely by the country's fixation on crack-cocaine, until, in September 1989, it reached a remarkable 64 percent – one of the most intense fixations by the American public on any issue in polling history. Within less than a year, however, the figure plummeted to less than 10 percent, as the media lost interest. However, the resulting political hysteria had already led to the passage of draconian penalties at the state and federal levels. Even as the drug scare faded from the public mind, these policies produced escalating levels of arrests and incarceration.

Although Bill Clinton advocated for treatment instead of incarceration during his 1992 presidential campaign, after his first few months in the White House he reverted to the drug war strategies of his Republican predecessors. Notoriously, Clinton rejected a U.S. Sentencing Commission recommendation to eliminate the disparity between crack and powder cocaine sentences, which had already led to astonishing racial disparities in the criminal justice system. He also rejected, with the encouragement of drug czar General Barry McCaffrey, health secretary Donna Shalala's advice to end the federal ban on funding for syringe access programs. Yet, a month before leaving office, Clinton asserted in a Rolling Stone interview that "we really need a re-examination of our entire policy on imprisonment" of people who use drugs, and said that marijuana use "should be decriminalized."

THE 2000S: THE PENDULUM BEGINS TO SHIFT

George W. Bush arrived in the White House as the drug war was running out of steam – yet he allocated more money than ever to it. His drug czar, John Walters, zealously focused on marijuana and launched a major campaign to promote student drug testing. While rates of illicit drug use remained constant, overdose fatalities rose rapidly. The era of George W. Bush also witnessed the rapid escalation of the militarization of domestic drug law enforcement. By the end of Bush's term, there were about 40,000 paramilitary-style SWAT raids on Americans every year – mostly for nonviolent drug law offenses, often misdemeanors. While federal reform mostly stalled under Bush, state-level reforms finally began to slow the growth of the drug war.

Politicians began to routinely admit to having used marijuana, and even cocaine, when they were younger. When Michael Bloomberg was questioned during his 2001 mayoral campaign about whether he had ever used marijuana, he said, "You bet I did – and I enjoyed it." Senator Barack Obama also candidly discussed his prior cocaine and marijuana use: "When I was a kid, I inhaled frequently – that was the point."
Despite the changed public face of drug use, the assault on Americans persisted. Bloomberg oversaw a higher rate of low-level marijuana arrests than any mayor in New York City history. And Obama, despite advocating for reforms – such as reducing the crack/powder sentencing disparity, ending the ban on federal funding for syringe access programs, and supporting state medical marijuana laws – has yet to shift drug control funding to a health-based approach.

Progress is inevitably slow, but today there is unprecedented momentum behind drug policy reform. At the height of the drug war hysteria in the late 1980s and early 1990s, a movement emerged seeking a new approach to drug policy. The growing movement included support from across the political spectrum – from prominent conservatives and liberals, civil libertarians and progressives. That movement is growing today.

FURTHER READING

Alexander, M. **The New Jim Crow: Mass Incarceration in the Age of Colorblindness**. New York: The New Press, 2010
Gray, M. **Drug Crazy: How We Got Into This Mess and How We Can Get Out**. New York: Routledge, 2000.
Musto, D. **The American Dream: Origins of Narcotic Control**. 1. New York: Oxford University Press, 1999.

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AMERICAN CIVIL LIBERTIES UNION
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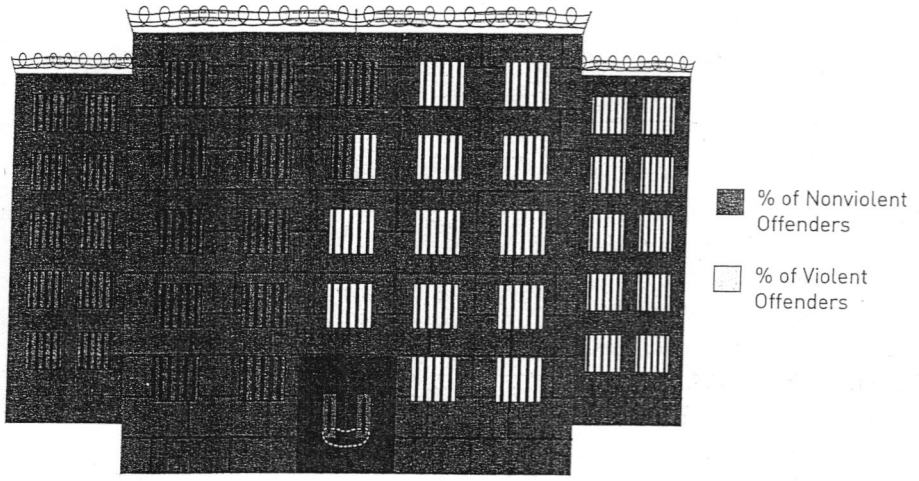
CIVIL Liberties

THE AMERICAN CIVIL LIBERTIES UNION
NATIONAL NEWSLETTER

A Nation Behind Bars



Nearly half of all state prisoners are locked up for nonviolent offenses.

With an incarcerated population of well over 2 million, the United States has earned the disgraceful distinction of being the world's largest jailer, ahead of China and Russia. We have 5 percent of the world's population but 25 percent of its prisoners.

With our prisons bursting at the seams, more Americans are deprived of their liberty than ever before—unfairly and unnecessarily—with no benefit to public safety and at great taxpayer expense. Nearly half of all people in state prisons are nonviolent offenders.

How did we get to this point? Blame it on policies of the past 40 years such as the "War on Drugs" and "Tough on Crime," which have produced legislation such as "Three Strikes, You're Out" and mandatory minimum sentencing. These policies—based not on sober scientific fact, but on fear—have done little to protect the public, while overcrowding prisons, burdening taxpayers, and normalizing an overly punitive mindset that turns to incarceration as a first—rather than a last—resort.

What's more, African Americans and Latinos disproportionately bear the brunt of the overincarceration crisis because of discriminatory laws and biased enforcement and sentencing, even though white Americans commit crimes at the same rates as people of color. A shocking one-in-nine young black men (aged 20-34) is behind bars.

Photo from Perversion of Justice, a documentary by Melissa Mummert

Hamedah Hasan, as a young mother, fled an abusive relationship and went to live with her cousin. He pressured her into running errands for his crack cocaine business in exchange for his hospitality. Despite only peripheral involvement in a first-time, nonviolent offense, Hasan was given life in prison (later reduced to 27 years). If her offense had instead involved powder cocaine, she would be free today, but the judge's hands were tied by mandatory minimum sentences for crack—a disparity that exacerbates racial inequality in the prison system, since crack arrestees are disproportionately black.

Another disturbing trend resulting from our nation's overreliance on incarceration and excessive sentencing is the rise in the number of elderly prisoners—the fastest-growing segment of the prison population. It costs two to three times more to house elderly prisoners than younger people. At the same time, an increase in age is correlated with a diminishing risk of recidivism. So, until we change our practices, the United States will continue to waste vast resources on people who no longer pose a threat to the community.

We're also seeing the resurgence of debtors' prisons, resulting in

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A Nation Behind Bars

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thousands of people being put in jail illegally because they are too poor to pay fines for traffic tickets or other minor misdemeanors.

Because Kyle Dewitt was jobless, he could not pay his fine when he got ticketed for catching a fish out of season. Although he offered to pay in installments, the judge rejected the proposal and Dewitt was jailed. It is hard to argue that Dewitt's jailing made the public safer, or that it made economic sense to jail him at taxpayer expense over a $215 fine.

The human toll of our criminal justice system is massive. Fortunately, policymakers from across the political spectrum are beginning to take note of these injustices, thanks in large part to the financial crisis facing states and the ACLU's advocacy.

In 2007, states spent more than $44 billion on incarceration and related expenses, up 127 percent since 1987. Continued prison growth is projected to cost states an additional $25 billion in 2011. With the "Great Recession" still in full swing, states simply cannot afford to continue down this path.

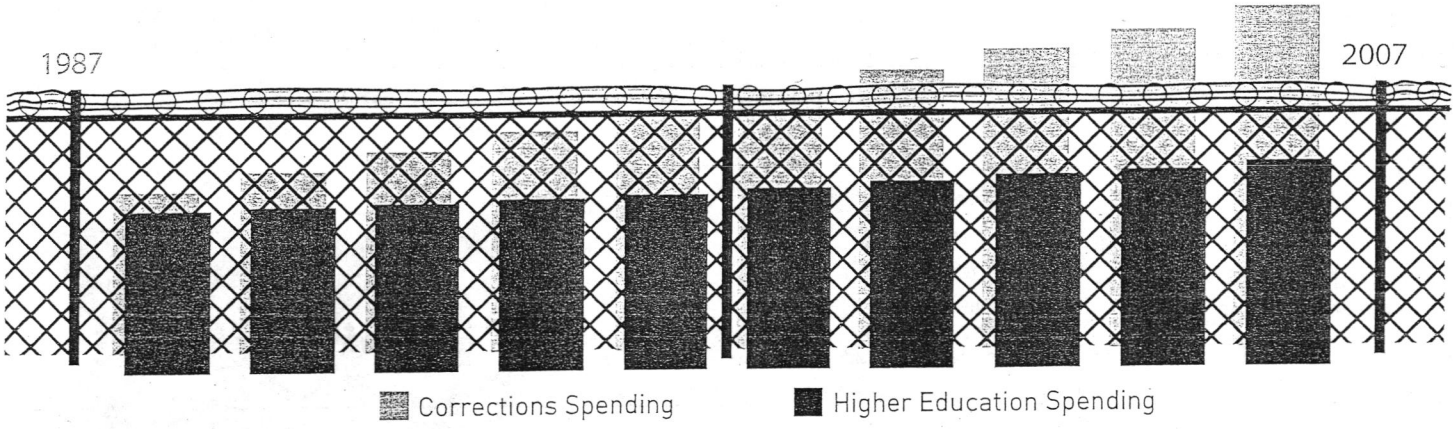
This new bipartisan scrutiny of prisons amidst budget shortfalls of historic proportions provides the ACLU with a unique window of opportunity to usher in reform, building on our decades of work in the criminal justice arena. We seek to generate reforms that promote more fairness in the criminal justice system—including fewer people behind bars when there are more effective alternatives—while advancing public safety and saving taxpayer dollars.

With ACLU affiliates in every state, and with the credibility of our 90-year history, we will make progress on this issue on every front. Already, we are successfully advocating for better sentencing guidelines at the federal level and in states. After decades of ACLU lobbying, President Obama signed the Fair Sentencing Act in August 2010, revising the racially biased disparity between crack and powder cocaine sentencing laws. This past June, the administration agreed to apply the new guidelines retroactively. As a result, Hamedah Hasan's remaining sentence has been cut in half and more than 12,000 other individuals like her—85 percent of whom are African American—now have the opportunity to have their sentences reviewed and possibly reduced.

We are litigating to end overcrowding and all manner of prisoner abuse. And we are providing guidance to policymakers on how to reduce their prison populations and costs while protecting communities. Our recent report "Smart Reform Is Possible" provides a menu of specific reforms available to state governments, along with success stories. In Ohio, for example, the ACLU helped get a bill passed that will save the state $1 billion and cut its prisoner population by nearly 14 percent. And in Mississippi, ACLU-inspired reforms will save taxpayers $450 million—while Mississippi's crime rate is at its lowest in 27 years.

We have become a nation behind bars and a prisoner to a broken correctional system. The time for reform is now. The ACLU is up for the task, and with your support, we will build on our hard-won momentum to further advance fairness, justice, and fiscal responsibility throughout the criminal justice system nationwide. ■

The United States prison population rose by 700% from 1970 to 2005, a rate far outpacing that of general population growth and crime rates.



By 2007, states spent more than $44 billion on incarceration and related expenses, a 127% jump from 1987. Over this same period, spending on higher education rose just 21%.

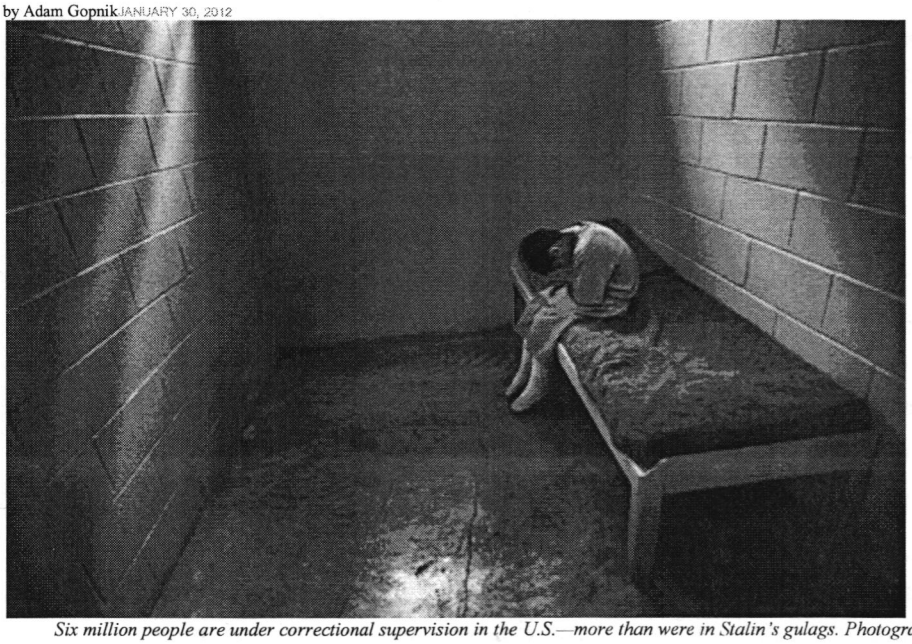
THE NEW YORKER

A CRITIC AT LARGE

THE CAGING OF AMERICA

Why do we lock up so many people?

by Adam Gopnik JANUARY 30, 2012



Six million people are under correctional supervision in the U.S.—more than were in Stalin's gulags. Photograph by Steve Liss.

A prison is a trap for catching time. Good reporting appears often about the inner life of the American prison, but the catch is that American prison life is mostly undramatic—the reported stories fail to grab us, because, for the most part, nothing *happens*. One day in the life of Ivan Denisovich is all you need to know about Ivan Denisovich, because the idea that anyone could live for a minute in such circumstances seems impossible; one day in the life of an American prison means much less, because the force of it is that one day typically stretches out for decades. It isn't the horror of the time at hand but the unimaginable sameness of the time ahead that makes prisons unendurable for their inmates. The inmates on death row in Texas are called men in "timeless time," because they alone aren't serving time: they aren't waiting out five years or a decade or a lifetime. The basic reality of American prisons is not that of the lock and key but that of the lock and clock.

That's why no one who has been inside a prison, if only for a day, can ever forget the feeling. Time stops. A note of attenuated panic, of watchful paranoia—anxiety and boredom and fear mixed into a kind of enveloping fog, covering the guards as much as the guarded. "Sometimes I think this whole world is one big prison yard, / Some of us are prisoners, some of us are guards," Dylan sings, and while it isn't strictly true—just ask the prisoners—it contains a truth: the guards are doing time, too. As a smart man once wrote after being locked up, the thing about jail is that

there are bars on the windows and they won't let you out. This simple truth governs all the others. What prisoners try to convey to the free is how the presence of time as something being done to you, instead of something you do things with, alters the mind at every moment. For American prisoners, huge numbers of whom are serving sentences much longer than those given for similar crimes anywhere else in the civilized world—Texas alone has sentenced more than four hundred teen-agers to life imprisonment—time becomes in every sense this thing you serve.

For most privileged, professional people, the experience of confinement is a mere brush, encountered after a kid's arrest, say. For a great many poor people in America, particularly poor black men, prison is a destination that braids through an ordinary life, much as high school and college do for rich white ones. More than half of all black men without a high-school diploma go to prison at some time in their lives. Mass incarceration on a scale almost unexampled in human history is a fundamental fact of our country today—perhaps *the* fundamental fact, as slavery was the fundamental fact of 1850. In truth, there are more black men in the grip of the criminal-justice system—in prison, on probation, or on parole—than were in slavery then. Over all, there are now more people under "correctional supervision" in America—more than six million—than were in the Gulag Archipelago under Stalin at its height. That city of the confined and the controlled, Lockuptown, is now the second largest in the United States.

The accelerating rate of incarceration over the past few decades is just as startling as the number of people jailed: in 1980, there were about two hundred and twenty people incarcerated for every hundred thousand Americans; by 2010, the number had more than tripled, to seven hundred and thirty-one. No other country even approaches that. In the past two decades, the money that states spend on prisons has risen at six times the rate of spending on higher education. Ours is, bottom to top, a "carceral state," in the flat verdict of Conrad Black, the former conservative press lord and newly minted reformer, who right now finds himself imprisoned in Florida, thereby adding a new twist to an old joke: A conservative is a liberal who's been mugged; a liberal is a conservative who's been indicted; and a passionate prison reformer is a conservative who's in one.

The scale and the brutality of our prisons are the moral scandal of American life. Every day, at least fifty thousand men—a full house at Yankee Stadium—wake in solitary confinement, often in "supermax" prisons or prison wings, in which men are locked in small cells, where they see no one, cannot freely read and write, and are allowed out just once a day for an hour's solo "exercise." (Lock yourself in your bathroom and then imagine you have to stay there for the next ten years, and you will have some sense of the experience.) Prison rape is so endemic—more than seventy thousand prisoners are raped each year—that it is routinely held out as a threat, part of the punishment to be expected. The subject is standard fodder for comedy, and an uncoöperative suspect being threatened with rape in prison is now represented, every night on television, as an ordinary and rather lovable bit of policing. The normalization of prison rape—like eighteenth-century japery about watching men struggle as they die on the gallows—will surely strike our descendants as chillingly sadistic, incomprehensible on the part of people who thought

themselves civilized. Though we avoid looking directly at prisons, they seep obliquely into our fashions and manners. Wealthy white teen-agers in baggy jeans and laceless shoes and multiple tattoos show, unconsciously, the reality of incarceration that acts as a hidden foundation for the country.

How did we get here? How is it that our civilization, which rejects hanging and flogging and disembowelling, came to believe that caging vast numbers of people for decades is an acceptably humane sanction? There's a fairly large recent scholarly literature on the history and sociology of crime and punishment, and it tends to trace the American zeal for punishment back to the nineteenth century, apportioning blame in two directions. There's an essentially Northern explanation, focussing on the inheritance of the notorious Eastern State Penitentiary, in Philadelphia, and its "reformist" tradition; and a Southern explanation, which sees the prison system as essentially a slave plantation continued by other means. Robert Perkinson, the author of the Southern revisionist tract "Texas Tough: The Rise of America's Prison Empire," traces two ancestral lines, "from the North, the birthplace of rehabilitative penology, to the South, the fountainhead of subjugationist discipline." In other words, there's the scientific taste for reducing men to numbers and the slave owners' urge to reduce blacks to brutes.

William J. Stuntz, a professor at Harvard Law School who died shortly before his masterwork, "The Collapse of American Criminal Justice," was published, last fall, is the most forceful advocate for the view that the scandal of our prisons derives from the Enlightenment-era, "procedural" nature of American justice. He runs through the immediate causes of the incarceration epidemic: the growth of post-Rockefeller drug laws, which punished minor drug offenses with major prison time; "zero tolerance" policing, which added to the group; mandatory-sentencing laws, which prevented judges from exercising judgment. But his search for the ultimate cause leads deeper, all the way to the Bill of Rights. In a society where Constitution worship is still a requisite on right and left alike, Stuntz startlingly suggests that the Bill of Rights is a terrible document with which to start a justice system—much inferior to the exactly contemporary French Declaration of the Rights of Man, which Jefferson, he points out, may have helped shape while his protégé Madison was writing ours.

The trouble with the Bill of Rights, he argues, is that it emphasizes process and procedure rather than principles. The Declaration of the Rights of Man says, Be just! The Bill of Rights says, Be fair! Instead of announcing general principles—no one should be accused of something that wasn't a crime when he did it; cruel punishments are always wrong; the goal of justice is, above all, that justice be done—it talks procedurally. You can't search someone without a reason; you can't accuse him without allowing him to see the evidence; and so on. This emphasis, Stuntz thinks, has led to the current mess, where accused criminals get laboriously articulated protection against procedural errors and no protection at all against outrageous and obvious violations of simple justice. You can get off if the cops looked in the wrong car with the wrong warrant when they found your joint, but you have no recourse if owning the joint gets you locked up for life. You may be spared the death penalty if you can show a problem with your appointed defender,

but it is much harder if there is merely enormous accumulated evidence that you weren't guilty in the first place and the jury got it wrong. Even clauses that Americans are taught to revere are, Stuntz maintains, unworthy of reverence: the ban on "cruel and unusual punishment" was designed to *protect* cruel punishments—flogging and branding—that were not at that time unusual.

The obsession with due process and the cult of brutal prisons, the argument goes, share an essential impersonality. The more professionalized and procedural a system is, the more insulated we become from its real effects on real people. That's why America is famous both for its process-driven judicial system ("The bastard got off on a technicality," the cop-show detective fumes) and for the harshness and inhumanity of its prisons. Though all industrialized societies started sending more people to prison and fewer to the gallows in the eighteenth century, it was in Enlightenment-inspired America that the taste for long-term, profoundly depersonalized punishment became most aggravated. The inhumanity of American prisons was as much a theme for Dickens, visiting America in 1842, as the cynicism of American lawyers. His shock when he saw the Eastern State Penitentiary, in Philadelphia—a "model" prison, at the time the most expensive public building ever constructed in the country, where every prisoner was kept in silent, separate confinement—still resonates:

I believe that very few men are capable of estimating the immense amount of torture and agony which this dreadful punishment, prolonged for years, inflicts upon the sufferers. . . . I hold this slow and daily tampering with the mysteries of the brain, to be immeasurably worse than any torture of the body: and because its ghastly signs and tokens are not so palpable to the eye and sense of touch as scars upon the flesh; because its wounds are not upon the surface, and it extorts few cries that human ears can hear; therefore I the more denounce it, as a secret punishment which slumbering humanity is not roused up to stay.

Not roused up to stay—that was the point. Once the procedure ends, the penalty begins, and, as long as the cruelty is routine, our civil responsibility toward the punished is over. We lock men up and forget about their existence. For Dickens, even the corrupt but communal debtors' prisons of old London were better than *this*. "Don't take it personally!"—that remains the slogan above the gate to the American prison Inferno. Nor is this merely a historian's vision. Conrad Black, at the high end, has a scary and persuasive picture of how his counsel, the judge, and the prosecutors all merrily congratulated each other on their combined professional excellence just before sending him off to the hoosegow for several years. If a millionaire feels that way, imagine how the ordinary culprit must feel.

In place of abstraction, Stuntz argues for the saving grace of humane discretion. Basically, he thinks, we should go into court with an understanding of what a crime is and what justice is like, and then let common sense and compassion and specific circumstance take over. There's a lovely scene in "The Castle," the Australian movie about a family fighting eminent-domain eviction,

where its hapless lawyer, asked in court to point to the specific part of the Australian constitution that the eviction violates, says desperately, "It's . . . just the *vibe* of the thing." For Stuntz, justice ought to be just the vibe of the thing—not one procedural error caught or one fact worked around. The criminal law should once again be more like the common law, with judges and juries not merely finding fact but making law on the basis of universal principles of fairness, circumstance, and seriousness, and crafting penalties to the exigencies of the crime.

The other argument—the Southern argument—is that this story puts too bright a face on the truth. The reality of American prisons, this argument runs, has nothing to do with the knots of procedural justice or the perversions of Enlightenment-era ideals. Prisons today operate less in the rehabilitative mode of the Northern reformers "than in a retributive mode that has long been practiced and promoted in the South," Perkinson, an American-studies professor, writes. "American prisons trace their lineage not only back to Pennsylvania penitentiaries but to Texas slave plantations." White supremacy is the real principle, this thesis holds, and racial domination the real end. In response to the apparent triumphs of the sixties, mass imprisonment became a way of reimposing Jim Crow. Blacks are now incarcerated seven times as often as whites. "The system of mass incarceration works to trap African Americans in a virtual (and literal) cage," the legal scholar Michelle Alexander writes. Young black men pass quickly from a period of police harassment into a period of "formal control" (i.e., actual imprisonment) and then are doomed for life to a system of "invisible control." Prevented from voting, legally discriminated against for the rest of their lives, most will cycle back through the prison system. The system, in this view, is not really broken; it is doing what it was designed to do. Alexander's grim conclusion: "If mass incarceration is considered as a system of social control—specifically, racial control—then the system is a fantastic success."

Northern impersonality and Southern revenge converge on a common American theme: a growing number of American prisons are now contracted out as for-profit businesses to for-profit companies. The companies are paid by the state, and their profit depends on spending as little as possible on the prisoners and the prisons. It's hard to imagine any greater disconnect between public good and private profit: the interest of private prisons lies not in the obvious social good of having the minimum necessary number of inmates but in having as many as possible, housed as cheaply as possible. No more chilling document exists in recent American life than the 2005 annual report of the biggest of these firms, the Corrections Corporation of America. Here the company (which spends millions lobbying legislators) is obliged to caution its investors about the risk that somehow, somewhere, someone might turn off the spigot of convicted men:

Our growth is generally dependent upon our ability to obtain new contracts to develop and manage new correctional and detention facilities. . . . The demand for our facilities and services could be adversely affected by the relaxation of enforcement efforts, leniency in conviction and sentencing practices or through the decriminalization of certain activities that are currently

proscribed by our criminal laws. For instance, any changes with respect to drugs and controlled substances or illegal immigration could affect the number of persons arrested, convicted, and sentenced, thereby potentially reducing demand for correctional facilities to house them.

Brecht could hardly have imagined such a document: a capitalist enterprise that feeds on the misery of man trying as hard as it can to be sure that nothing is done to decrease that misery.

Yet a spectre haunts all these accounts, North and South, whether process gone mad or penal colony writ large. It is that the epidemic of imprisonment seems to track the dramatic decline in crime over the same period. The more bad guys there are in prison, it appears, the less crime there has been in the streets. The real background to the prison boom, which shows up only sporadically in the prison literature, is the crime wave that preceded and overlapped it.

For those too young to recall the big-city crime wave of the sixties and seventies, it may seem like mere bogeyman history. For those whose entire childhood and adolescence were set against it, it is the crucial trauma in recent American life and explains much else that happened in the same period. It was the condition of the Upper West Side of Manhattan under liberal rule, far more than what had happened to Eastern Europe under socialism, that made neo-con polemics look persuasive. There really was, as Stuntz himself says, a liberal consensus on crime ("Wherever the line is between a merciful justice system and one that abandons all serious effort at crime control, the nation had crossed it"), and it really did have bad effects.

Yet if, in 1980, someone had predicted that by 2012 New York City would have a crime rate so low that violent crime would have largely disappeared as a subject of conversation, he would have seemed not so much hopeful as crazy. Thirty years ago, crime was supposed to be a permanent feature of the city, produced by an alienated underclass of super-predators; now it isn't. Something good happened to change it, and you might have supposed that the change would be an opportunity for celebration and optimism. Instead, we mostly content ourselves with grudging and sardonic references to the silly side of gentrification, along with a few all-purpose explanations, like broken-window policing. This is a general human truth: things that work interest us less than things that don't.

So what *is* the relation between mass incarceration and the decrease in crime? Certainly, in the nineteen-seventies and eighties, many experts became persuaded that there was no way to make bad people better; all you could do was warehouse them, for longer or shorter periods. The best research seemed to show, depressingly, that nothing works—that rehabilitation was a ruse. Then, in 1983, inmates at the maximum-security federal prison in Marion, Illinois, murdered two guards. Inmates had been (very occasionally) killing guards for a long time, but the timing of the murders, and the fact that they took place in a climate already prepared to believe that even ordinary humanity was wasted on the criminal classes, meant that the entire prison was put on permanent lockdown. A century and a half after absolute solitary first appeared in American prisons, it was reintroduced. Those terrible numbers began to grow.

And then, a decade later, crime started falling: across the country by a standard measure of about forty per cent; in New York City by as much as eighty per cent. By 2010, the crime rate in New York had seen its greatest decline since the Second World War; in 2002, there were fewer murders in Manhattan than there had been in any year since 1900. In social science, a cause sought is usually a muddle found; in life as we experience it, a crisis resolved is causality established. If a pill cures a headache, we do not ask too often if the headache might have gone away by itself.

All this ought to make the publication of Franklin E. Zimring's new book, "The City That Became Safe," a very big event. Zimring, a criminologist at Berkeley Law, has spent years crunching the numbers of what happened in New York in the context of what happened in the rest of America. One thing he teaches us is how little we know. The forty per cent drop across the continent—indeed, there was a decline throughout the Western world— took place for reasons that are as mysterious in suburban Ottawa as they are in the South Bronx. Zimring shows that the usual explanations—including demographic shifts—simply can't account for what must be accounted for. This makes the international decline look slightly eerie: blackbirds drop from the sky, plagues slacken and end, and there seems no absolute reason that societies leap from one state to another over time. Trends and fashions and fads and pure contingencies happen in other parts of our social existence; it may be that there are fashions and cycles in criminal behavior, too, for reasons that are just as arbitrary.

But the additional forty per cent drop in crime that seems peculiar to New York finally succumbs to Zimring's analysis. The change didn't come from resolving the deep pathologies that the right fixated on—from jailing super predators, driving down the number of unwed mothers, altering welfare culture. Nor were there cures for the underlying causes pointed to by the left: injustice, discrimination, poverty. Nor were there any "Presto!" effects arising from secret patterns of increased abortions or the like. The city didn't get much richer; it didn't get much poorer. There was no significant change in the ethnic makeup or the average wealth or educational levels of New Yorkers as violent crime more or less vanished. "Broken windows" or "turnstile jumping" policing, that is, cracking down on small visible offenses in order to create an atmosphere that refused to license crime, seems to have had a negligible effect; there was, Zimring writes, a great difference between the slogans and the substance of the time. (Arrests for "visible" nonviolent crime—e.g., street prostitution and public gambling—mostly went *down* through the period.)

Instead, small acts of social engineering, designed simply to stop crimes from happening, helped stop crime. In the nineties, the N.Y.P.D. began to control crime not by fighting minor crimes in safe places but by putting lots of cops in places where lots of crimes happened—"hot-spot policing." The cops also began an aggressive, controversial program of "stop and frisk"—"designed to catch the sharks, not the dolphins," as Jack Maple, one of its originators, described it—that involved what's called pejoratively "profiling." This was not so much racial, since in any given neighborhood all the suspects were likely to be of the same race or color, as social, involving the thousand small clues that policemen recognized already. Minority communities,

Zimring emphasizes, paid a disproportionate price in kids stopped and frisked, and detained, but they also earned a disproportionate gain in crime reduced. "The poor pay more and get more" is Zimring's way of putting it. He believes that a "light" program of stop-and-frisk could be less alienating and just as effective, and that by bringing down urban crime stop-and-frisk had the net effect of greatly reducing the number of poor minority kids in prison for long stretches.

Zimring insists, plausibly, that he is offering a radical and optimistic rewriting of theories of what crime is and where criminals are, not least because it disconnects crime and minorities. "In 1961, twenty six percent of New York City's population was minority African American or Hispanic. Now, half of New York's population is—and what that does in an enormously hopeful way is to destroy the rude assumptions of supply side criminology," he says. By "supply side criminology," he means the conservative theory of crime that claimed that social circumstances produced a certain net amount of crime waiting to be expressed; if you stopped it here, it broke out there. The only way to stop crime was to lock up all the potential criminals. In truth, criminal activity seems like most other human choices—a question of contingent occasions and opportunity. Crime is not the consequence of a set number of criminals; criminals are the consequence of a set number of opportunities to commit crimes. Close down the open drug market in Washington Square, and it does not automatically migrate to Tompkins Square Park. It just stops, or the dealers go indoors, where dealing goes on but violent crime does not.

And, in a virtuous cycle, the decreased prevalence of crime fuels a decrease in the prevalence of crime. When your friends are no longer doing street robberies, you're less likely to do them. Zimring said, in a recent interview, "Remember, nobody ever made a living mugging. There's no minimum wage in violent crime." In a sense, he argues, it's recreational, part of a life style: "Crime is a routine behavior; it's a thing people do when they get used to doing it." And therein lies its essential fragility. Crime ends as a result of "cyclical forces operating on situational and contingent things rather than from finding deeply motivated essential linkages." Conservatives don't like this view because it shows that being tough doesn't help; liberals don't like it because apparently being nice doesn't help, either. Curbing crime does not depend on reversing social pathologies or alleviating social grievances; it depends on erecting small, annoying barriers to entry.

One fact stands out. While the rest of the country, over the same twenty-year period, saw the growth in incarceration that led to our current astonishing numbers, New York, despite the Rockefeller drug laws, saw a marked decrease in its number of inmates. "New York City, in the midst of a dramatic reduction in crime, is locking up a much smaller number of people, and particularly of young people, than it was at the height of the crime wave," Zimring observes. Whatever happened to make street crime fall, it had nothing to do with putting more men in prison. The logic is self-evident if we just transfer it to the realm of white-collar crime: we easily accept that there is no net sum of white-collar crime waiting to happen, no inscrutable generation of super-predators produced by Dewar's-guzzling dads and scaly M.B.A. profs; if you stop an embezzlement scheme here on Third Avenue, another doesn't naturally start in the next

office building. White-collar crime happens through an intersection of pathology and opportunity; getting the S.E.C. busy ending the opportunity is a good way to limit the range of the pathology.

Social trends deeper and less visible to us may appear as future historians analyze what went on. Something other than policing may explain things—just as the coming of cheap credit cards and state lotteries probably did as much to weaken the Mafia's Five Families in New York, who had depended on loan sharking and numbers running, as the F.B.I. could. It is at least possible, for instance, that the coming of the mobile phone helped drive drug dealing indoors, in ways that helped drive down crime. It may be that the real value of hot spot and stop-and-frisk was that it provided a single game plan that the police believed in; as military history reveals, a bad plan is often better than no plan, especially if the people on the other side think it's a good plan. But one thing is sure: social epidemics, of crime or of punishment, can be cured more quickly than we might hope with simpler and more superficial mechanisms than we imagine. Throwing a Band-Aid over a bad wound is actually a decent strategy, if the Band-Aid helps the wound to heal itself.

Which leads, further, to one piece of radical common sense: since prison plays at best a small role in stopping even violent crime, very few people, rich or poor, should be in prison for a nonviolent crime. Neither the streets nor the society is made safer by having marijuana users or peddlers locked up, let alone with the horrific sentences now dispensed so easily. For that matter, no social good is served by having the embezzler or the Ponzi schemer locked in a cage for the rest of his life, rather than having him bankrupt and doing community service in the South Bronx for the next decade or two. Would we actually have more fraud and looting of shareholder value if the perpetrators knew that they would lose their bank accounts and their reputation, and have to do community service seven days a week for five years? It seems likely that anyone for whom those sanctions aren't sufficient is someone for whom no sanctions are ever going to be sufficient. Zimring's research shows clearly that, if crime drops on the street, criminals coming out of prison stop committing crimes. What matters is the incidence of crime in the world, and the continuity of a culture of crime, not some "lesson learned" in prison.

At the same time, the ugly side of stop-and-frisk can be alleviated. To catch sharks and not dolphins, Zimring's work suggests, we need to adjust the size of the holes in the nets—to make crimes that are the occasion for stop-and-frisks *real* crimes, not crimes like marijuana possession. When the New York City police stopped and frisked kids, the main goal was not to jail them for having pot but to get their fingerprints, so that they could be identified if they committed a more serious crime. But all over America the opposite happens: marijuana possession becomes the serious crime. The cost is so enormous, though, in lives ruined and money spent, that the obvious thing to do is not to enforce the law less but to change it now. Dr. Johnson said once that manners make law, and that when manners alter, the law must, too. It's obvious that marijuana is now an almost universally accepted drug in America: it is not only used casually (which has been true for decades) but also talked about casually on television and in the movies

(which has not). One need only watch any stoner movie to see that the perceived risks of smoking dope are not that you'll get arrested but that you'll get in trouble with a rival frat or look like an idiot to women. The decriminalization of marijuana would help end the epidemic of imprisonment.

The rate of incarceration in most other rich, free countries, whatever the differences in their histories, is remarkably steady. In countries with Napoleonic justice or common law or some mixture of the two, in countries with adversarial systems and in those with magisterial ones, whether the country once had brutal plantation-style penal colonies, as France did, or was once itself a brutal plantation-style penal colony, like Australia, the natural rate of incarceration seems to hover right around a hundred men per hundred thousand people. (That doesn't mean it doesn't get lower in rich, homogeneous countries—just that it never gets much higher in countries otherwise like our own.) It seems that one man in every thousand once in a while does a truly bad thing. All other things being equal, the point of a justice system should be to identify that thousandth guy, find a way to keep him from harming other people, and give everyone else a break.

Epidemics seldom end with miracle cures. Most of the time in the history of medicine, the best way to end disease was to build a better sewer and get people to wash their hands. "Merely chipping away at the problem around the edges" is usually the very best thing to do with a problem; keep chipping away patiently and, eventually, you get to its heart. To read the literature on crime before it dropped is to see the same kind of dystopian despair we find in the new literature of punishment: we'd have to end poverty, or eradicate the ghettos, or declare war on the broken family, or the like, in order to end the crime wave. The truth is, a series of small actions and events ended up eliminating a problem that seemed to hang over everything. There was no miracle cure, just the intercession of a thousand smaller sanities. Ending sentencing for drug misdemeanors, decriminalizing marijuana, leaving judges free to use common sense (and, where possible, getting judges who are judges rather than politicians)—many small acts are possible that will help end the epidemic of imprisonment as they helped end the plague of crime.

"Oh, I have taken too little care of this!" King Lear cries out on the heath in his moment of vision. "Take physic, pomp; expose thyself to feel what wretches feel." "This" changes; in Shakespeare's time, it was flat-out peasant poverty that starved some and drove others as mad as poor Tom. In Dickens's and Hugo's time, it was the industrial revolution that drove kids to mines. But every society has a poor storm that wretches suffer in, and the attitude is always the same: either that the wretches, already dehumanized by their suffering, deserve no pity or that the oppressed, overwhelmed by injustice, will have to wait for a better world. At every moment, the injustice seems inseparable from the community's life, and in every case the arguments for keeping the system in place were that you would have to revolutionize the entire social order to change it—which then became the argument for revolutionizing the entire social order. In every case, humanity and common sense made the insoluble problem just get up and go away. Prisons are our this. We need take more care. ♦